

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(c) and 6.3 of the Commission's Rules of Practice and Procedure,¹ this ruling sets the procedural schedule, assigns the principal hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held on July 22, 2002.

Background

On June 6, 2002, the Commission issued this order instituting investigation (OII) into, as the caption for this proceeding states, "the operations, practices and conduct" of respondent, Cingular Wireless (Cingular), "in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee

and other penalties from consumers.” The parties to the OII in addition to Cingular are the Commission’s Consumer Protection & Safety Division (CPSD) the Utility Consumers’ Action Network (UCAN), and The Utility Reform Network (TURN).

Scope of the Proceeding

The OII’s Ordering Paragraphs constitute the preliminary scoping memo for this proceeding. This scoping memo provisionally confirms the preliminary scoping memo until such time as the Commission acts on Cingular’s motion to dismiss the OII, filed on July 19, 2002, prior to the PHC. Pursuant to the administrative law judge’s (ALJ) oral ruling at the PHC, the date for responses has been extended to August 19 and Cingular, which has been authorized to file a reply, must do so by August 30.

Other deadlines have been set out in the schedule below. The ALJ will determine whether or not to set a second prehearing conference.

Discovery

The Commission will not impose a discovery plan on the participants. Any discovery disputes that they cannot resolve between themselves, after good faith efforts to meet and confer, may be raised by written motion in accordance with Rule 45. The Commission generally looks to the Code of Civil Procedure for guidance in resolving discovery disputes. The parties are reminded that the statutory 12-month timeline for resolution of this investigation requires the

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulation.

timely issuance of data requests and other forms of discovery, and timely compliance with all such reasonable discovery.

Schedule

The schedule for this proceeding is as follows:

September 20, 2002	Staff and intervenors distribute prepared testimony.
November 12, 2002	Respondent distributes prepared testimony
November 25, 2002	Staff and intervenors distribute prepared rebuttal testimony.
December 9, 2002, to be continued day to day through December 18, 2002, as necessary	Evidentiary Hearing, Commission Courtroom, 505 Van Ness Avenue, State Office Building, San Francisco, CA 94102.
Date to be set at Evidentiary Hearing	Concurrent initial briefs filed.
Approx. January 31, 2003 (date to be set at Evidentiary Hearing)	Concurrent reply briefs filed; case submitted.
Approx. April 1, 2003	Presiding Officer's Decision (POD) filed within 60 days of submission.
Approx. May 1, 2002	POD becomes decision of Commission (unless appeal filed under Pub. Util. Code § 1701.2(a))
Approx. June 2, 2003	On and after this date, Commission may act on POD (if appeal filed)

The briefing schedule will be set at the evidentiary hearing, unless otherwise determined by the ALJ. As indicated above, the anticipated submission date is tied to the date parties file concurrent reply briefs, as are all

subsequent statutory dates. Thus, submission, as well as subsequent dates, may be either sooner or later than the illustrative dates indicated above.

Category of Proceeding and Need for Hearing

This ruling confirms this is an adjudicatory proceeding and that a hearing may be required, as preliminarily determined in the OIL.

Assignment of Principal Hearing Officer

ALJ Jean Vieth will be the presiding officer.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings pursuant to Pub. Util. Code § 1701.2(b).

Procedures at Evidentiary Hearing

Information regarding preparation and use of Exhibits at evidentiary hearing is attached to this ruling as Appendix A.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The principal hearing officer will be Administrative Law Judge Vieth.
4. This ruling confirms that this proceeding is an adjudicatory proceeding and that a hearing may be necessary.

5. Ex parte communications are prohibited in adjudicatory proceedings pursuant to Pub. Util. Code § 1701.2(b).

6. Parties should prepare and use Exhibits at evidentiary hearing as directed in Appendix A.

Dated August 6, 2002, at San Francisco, California.

/s/ CARL WOOD

Carl Wood
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated August 6, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

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EXHIBITS

Service of Exhibits

All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony should NOT be filed with the Commission's Docket Office.

Identification of Exhibits in the Hearing Room

Each party sponsoring an exhibit should, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least five copies available for distribution to parties present in the hearing room. **The *upper right hand corner* of the exhibit cover sheet should be *blank* for the ALJ's exhibit stamp.** Thus, if a party "pre-marks" an exhibit in any way, it should do so in the upper left hand corner of the cover sheet.

Please note that this directive applies to cross-examination exhibits as well. If there is insufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

The following blocks of numbers have been reserved for each of the parties:

1-199	CPSD
200-299	UCAN
300-399	TURN
400-599	Cingular
400-600	

A party that "pre-marks" exhibits should plan to use them at hearing in consecutive numerical order.

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Cross-Examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

Corrections to Exhibits

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

(END OF APPENDIX A)